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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,099	01/04/2001	Richard E. Vogel	70254-328	8152

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EXAMINER

MEREK, JOSEPH C

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/681,099

Applicant(s)

VOGEL ET AL.

Examiner

Joe Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 62-80 is/are allowed.
- 6) ☐ Claim(s) 1-17,20-30,32,34-38,42,43,45,46 and 52-61 is/are rejected.
- 7) ☒ Claim(s) 18 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "the annular rib of the sleeve" and frictional material on the inner surface of the sleeve is rubber" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 46 and 59 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 46, it has not been adequately disclosed

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that the sleeve has a rubber material on its interior surface. Regarding claim 59, it has not been adequately disclosed how the interior surface of the sleeve has an annular rib.

Claim Rejections - 35 U.S.C. § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claim Rejections - 35 USC § 102

5. Claims 53, 55-61- are rejected under 35 U.S.C. 102(e) as being anticipated by Wemyss. Regarding claim 53, see Figs. 19 and 20. Regarding claim 55, the holder as shown in Fig. 19 is tapered. Regarding claim 56, the rib is the friction enhancer. Regarding claim 57, the ribs are a frictional material as seen in cross-section of Fig. 19. Regarding claims 58-60, see Fig. 19, where the protrusion is an annular rib and is and embossment. Regarding claim 61, see Fig. 20.

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6. Claims 43, 52, 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Stokes (US 3,592,501). See Fig. 1, where 1 is the sleeve. Regarding claims 52, the inner surface of the sleeve is the friction enhancer. The material polypropylene from which the sleeve is made is frictional. Regarding claim 51, see Figs. 1-3 where the slot is shown and the grasping of the cup is taught. Regarding claim 43, the sleeve is tapered.

7. Claims 42, 43, 45, and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Fitzgerald et al. Regarding claim 52, the ribs on the inner surface of the sleeve are a piece of frictional material and will increase the resistance between the sleeve and the cup when the cup is received in the sleeve. Regarding claim 42, see Fig. 2, where the sleeve tapers away from the open end. Regarding claim 43, see Figs. 3 and 4, where the hole 8 is shown. Regarding claim 45, the ribs are adjacent the upper edge.

Claim Rejections - 35 U.S.C. § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wemyss in view of Good et al. Regarding claim 54, Wemyss does not teach the at least one air opening in the bottom wall. Good et al teaches a similar structure with air openings in the bottom wall. It

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would have been obvious to employ the openings of Good et al in the sleeve of Wemyss to make a lighter structure or to reduce the amount of plastic required to produce the article.

10. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald et al in view of Staake. Regarding claim 46, Fitzgerald et al does not teach that the ribs are made of rubber. Staake teaches a similar device where the ribs are made of rubber. It would have been obvious to employ the rubber of Staake in the container of Fitzgerald et al to provide an alternative material for the ribs.

11. Claims 1-12, 19-29, and 32, and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of FR 1,437,341. Regarding claims 1, 19, and 32, Marsters et al does not teach the collar. FR '341, as seen in the Figs 1 and 2, teaches a collar for a cup. It would have been obvious to employ the collar of FR '341 in the cup of Marsters et al so that the cup could be used by infants. The collar will cause the cup to be retained between the collar and the sleeve. Regarding claims 8 and 25, see Fig.2 of FR '341 where the shoulder is shown that limits the insertion of the collar. Regarding claims 9-12, 26-29, and 34-37, the inner surface of the parts are the enhancer. The material is frictional. Regarding claim 13, official notice is taken that it is well known to add rubber gaskets to parts that are to be mated. It would have been obvious to provide a gasket between the parts to provide a liquid tight joint.

12. Claims 14-16, 30, 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of FR '341 as applied to claim 11 above, and further in view of Smith et al.

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The modified container of Marsters et al does not teach the protrusion on the insert portion of the collar. Smith et al teaches a collar for inserting into a container with a protrusion on the insert portion. It would have been obvious to employ the rib of Smith et al in the modified container of Marsters et al to provide a liquid tight seal as taught by Smit et al. Regarding claims 15 and 16, the protrusion is an annular rib and an embossment.

13. Claim 17 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of FR '341 and Smith et al as applied to claim 14 above, and further in view of Fitzgerald et al. Regarding claim 17, as it is best understood, the modified container of Marsters et al does not teach the longitudinal rib on the inner surface of the sleeve (the insert portion in on the collar). Fitzgerald et al teaches a holder or sleeve with ribs on the inner surface for holding the inner container. It would have been obvious to employ the ribs of Fitzgerald et al in the modified container of Marsters et al to better retain the cup in the sleeve.

14. Claims 1-7, 9-13, 19-24, 26-29 and 32-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Schmiedeknecht (GB 20, 635). Regarding claims 1, 20, and 32, Marsters et al does not teach the collar. Schmiedeknecht as seen in the Fig., teaches a collar for a cup. It would have been obvious to employ the collar of Schmiedeknecht in the cup of Marsters et al to provide a hygienic drinking surface. The collar will cause the cup to be retained between the collar and the sleeve. Regarding claims 9-12, 26-29, and 34-37, the inner surface of the parts are the enhancer. The material is frictional. Regarding claim 13, official

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notice is taken that it is well known to add rubber gaskets to parts that are to be mated. It would have been obvious to provide a gasket between the parts to provide a liquid tight joint.

15. Claims 14-16, 30, 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Schmiedeknecht (GB 20, 635) as applied to claim 11 above, and further in view of Smith et al. The modified container of Marsters et al does not teach the protrusion on the insert portion of the collar. Smith et al teaches a collar for inserting into a container with a protrusion on the insert portion. It would have been obvious to employ the rib of Smith et al in the modified container of Marsters et al to provide a liquid tight seal as taught by Smith et al.

Regarding claims 15 and 16, the protrusion is an annular rib and an embossment.

16. Claim 17 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Schmiedeknecht (GB 20, 635) and Smith et al as applied to claim 14 above, and further in view of Fitzgerald et al. Regarding claim 17, as it is best understood, the modified container of Marsters et al does not teach the longitudinal rib on the inner surface of the sleeve (the insert portion in on the collar). Fitzgerald et al teaches a holder or sleeve with ribs on the inner surface for holding the inner container. It would have been obvious to employ the ribs of Fitzgerald et al in the modified container of Marsters et al to better retain the cup in the sleeve.

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Allowable Subject Matter

17. Claims 62-80 are allowed.

Response to Arguments

18. Applicant's arguments filed 4/17/02 have been fully considered but they are not persuasive. The ribs of Fitzgerald et al are a friction enhancer. They will enhance the friction between the container and the sleeve. The references to FR '341 and Marsters are analogous since they are both drinking vessels. Schmiedeknecht is analogous also since it is a drinking vessel. Smith is also related since it is in a sister art bottles.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Meshberg, Tupper, Abby, Deaton, Bolte, and Evans are all cited for teaching sleeves.

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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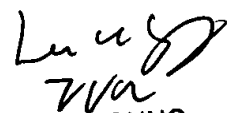
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses in Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joe Merek whose telephone number is (703) 305-0644.

Joe Merek/jm

June 30, 2002


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